IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17700 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ARVIND C.TRIVEDI - Petitioner(s)
Versus
STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :
MR DP VORA for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1 - 2.
RULE SERVED for Respondent(s) : 1 - 3.
DS AFF.NOT FILED (R) for Respondent(s) : 4,
RULE SERVED BY DS for Respondent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 24/07/2007

ORAL JUDGMENT

Heard learned advocate Mr. DP Vora on behalf of

the petitioner, learned AGP Mr. Amit Patel appearing for the respondent.

The claim of the present petitioner is for the restoration of 1/3 of pension as per the decision of Apex Court reported in **AIR 1996 SC page 1201**. This very question is decided by this Court in the group of petitions being SCA no. 18119 of 2005, 18120 of 2005 and 18121 of 2005 dated 24/3/2006.

Learned advocate Mr. Vora submitted that benefit in favour of the aforesaid four employees were given in pursuance to the order passed by this Court as referred above.

He also submitted that petitioner having similar set of facts and entitled the same benefit of restoration of 1/3 of pension as per the decision of Apex Court as referred above.

Relevant para 3 to 8 of the decision of learned Single Judge as referred above are quoted as under:

> **3. For the purpose of record, it would be sufficient to take note of the factual details arising in Special Civil Application No. 18117/2005. The petitioner Shri P.A. Zhala herein was serving as Deputy Superintendent of Police under**

respondent no.1 i.e. Government of Gujarat. He was sent on Deputation to Indian Petrochemicals Corporation Limited (IPCL for short) on 01-04-1977. While still on deputation a proposal was sent by IPCL to State Government to permit IPCL to absorb the petitioner on permanent basis. The proposal was accepted by the State Government and a resolution to this effect was also passed being resolution dated 03-06-1980. As per the resolution the petitioner was treated to have retired from Government Service with effect from 30-03-1980.

3.1 As per his services with the State Government upon his retirement the petitioner was held entitled to receive pension at the rate of Rs.616/-per month. As per his option, he was permitted to commute 100% pension. He was accordingly paid pension of Rs. 15,378/- by the respondents on 05-08-1982.

4. It is the case of the petitioners that after completion of 15 years from the date of retirement or commutation whichever is later, they should be restored 1/3rd of pension payable to him. The petitioners relied on the decision of the Hon'ble Supreme Court in the case of Welfare Association of Absorbed Central Government Employees in Public Enterprises and others v. Union of India and another reported in (1996) 2 Supreme Court Cases 187.

5. It is the case of the petitioners that pursuant to the decision of the Hon'ble Supreme Court in the said decision, Central Government has also issued a memorandum dated 13-01-1998 granting such benefits to the Central Government employees who were permitted lump sum pension upon absorption in autonomous bodies. It is provided that such benefits are made available by the Central Government and the State Government

therefore, cannot provide for a different yardstick. It is further contended that the ratio laid down by the Hon'ble Supreme Court in the case of Welfare Association of Absorbed Central Government Employees in Public Enterprises and others v. Union of India and another(Supra) would squarely apply in the present case also.

6. The learned advocate for the petitioners places on record a Government Resolution dated 20-07-2002 in which also the State Government has taken a similar decision. He submits that in view of the said Government Resolution stand of the respondents as emerging from the communication dated 14-06-2004 produced at page 58 to the petition, is invalid.

7. The learned AGP Miss M.L. Shah supported the Government stand and submitted that the petitioners cannot seek the benefits of pay scale pursuant to 5th

pay commission recommendations since the petitioners had already retired from the Government service long before the 5th pay commission recommendations were implemented. Since the petitioners were at the employment of IPCL at the relevant time, they cannot get the benefits of revised pay scale. The learned advocate for the petitioners confined the prayer in the petition to being granted restoration of 1/3rd pension upon completion of 15 years of retirement to the petitioners or commutation date whichever is later. I find that the petitioners have made out sufficient ground for such a direction. In the decision of the Welfare Association of Absorbed Central Government Employees in Public Enterprises and others v. Union of India and another(Supra) the Hon'ble Supreme Court was concerned with a very similar situation wherein it was held that :

"If after the expiry of 15 years, the

pensioners who have opted for one-third commutation, become entitled to restoration of pension on the ground that the lump sum amount paid had got adjusted before the said period as held in "Common Cause" case, there is no good reason for not applying the ame to the petitioners who have commuted their one-third portion of the pension under Rule 37-A of the CCS (Pension) Rules, 1972 without any commitment for this portion of commutation. Presumably the respondents realizing the fallacy have withdrawn the scheme of permitting commutation of full pension by OM No. 4/42/91-P&W(D) dated 31-3-1995."

As per Government Resolution dated 20-07-2002, issued by the State Government also such a decision has been taken.

8. Accordingly, I find that the petitioners are entitled to restoration of 1/3rd of pension upon completion of 15 years of retirement or commutation date whichever if later. It will be open for the respondents to verify full details of the date of retirement of the petitioners and date of commutation of pension and the amount of pension receivable by the petitioners. For the above purpose, if the petitioners apply for restoration of 1/3rd

pension in terms of Government Resolution dated 20-07-2002, fulfilling condition laid down therein, their case will be examined and restoration granted as observed and directed by this order here-in-above. While granting such benefits to the petitioners, respondents shall also bear in mind the observations made by the Hon'ble Supreme Court in the case of Welfare Association of Absorbed Central Government Employees in Public Enterprises and another v. Arvind Verma and others reported in AIR 1998 Supreme Court 2862, wherein in para-6 following observations were made :

“6. After hearing counsel on both sides, we make it clear that the respondents are liable to restore not only the pension as ordered by this Court in the said judgment,but also all the attendant benefits as given to the Central Government pensioners. We hold that there was some genuine doubt on the part of the respondents in construing and giving effect to the prejudgment of this Court and, therefore, there is no contempt. We now direct the respondents to comply wit the judgment of his Court as explained hereinbefore within three months from this date.”

I have considered the observations made by this Court as referred above, petitioner has also completed fifteen years after retirement or commutation date and therefore, he entitled for the benefit of restoration of 1/3 pension.

Therefore, it is directed to the respondent to verify full details of the date of retirement of the petitioner and date of commutation of the pension and amount of pension receivable by the petitioner. For the above purpose, if the above present petitioner apply for restoration of 1/3 pension in terms of Government resolution dated 20/7/2002, fulfilling condition laid down therein, their case will be examined and restoration may be considered as observed and directed by this Court hereinabove. While considering for such benefit to the petitioner, respondent shall also bear in mind the observations made by Apex Court in case of **Welfare Association of Absorbed Central Government Employees in Public Enterprises and others Vs. Union of India and another** reported in **AIR 1998 (SC) page 2862,** wherein in para 6 following observations were made:

> **“6. After hearing counsel on both sides, we make it clear that the respondents are liable to restore not only the pension as ordered by this Court in the said judgment, but also all the atterdant benefits as given to the Central Government pensioners. We hold that there was some genuine doubt on the part of the respondents in construing and giving effect to the prejudgment of this**

Court and, therefore, there is no contempt. We now direct the respondents to comply with the judgment of his Court as explained hereinbefore within three months from this date."

Accordingly, the respondents shall have to consider the case of petitioners and to pass appropriate reasoned order after considering the decision of this Court as referred above and decide that whether petitioners are entitled restoration of 1/3 Pension as per Resolution dated 20/7/2002 or not. Then to pass final order accordingly.

In view of the above observations and directions, present petition is disposed of without expressing any opinion on merits.

(H.K.RATHOD, J)

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